

INITIAL STATEMENT OF REASONS

TITLE 14. NATURAL RESOURCES DIVISION 1. FISH AND GAME COMMISSION – DEPARTMENT OF FISH AND GAME SUBDIVISION 3. GENERAL REGULATIONS CHAPTER 3. MISCELLANEOUS

ADDING SECTIONS 709 and 709.1 TITLE 14 CALIFORNIA CODE OF REGULATIONS (HUNTER EDUCATION INSTRUCTOR INCENTIVE PROGRAM)

SPECIFIC PURPOSE OF THE REGULATIONS

A pilot Hunter Education Incentive Program was implemented in 2008 in order to address the declining number of Hunter Education Instructors as well as to encourage current instructors to retain their certification and “active” status. This program consisted of Private Lands Management (PLM) tags and hunts donated by private hunting clubs. Although a limited number of opportunities were provided through the pilot program, the number of certified hunter education instructors climbed from 400 prior to implementation of the program to approximately 850 currently. Compliance with required training has increased from 50% prior to 2008 to well over 90% in 2010, and class numbers have increased from an average of 1,800 per year to over 2,000 in 2010.

The regulatory change proposal creates specific eligibility criteria for Department of Fish and Game (DFG) hunter education instructors to participate in the Hunter Education Incentive Program (Program). The purpose of this Program is to recruit new instructors and retain certified instructors in order to build a sufficient volunteer corps to address unmet public demand for mandatory classes. These criteria include hunter education instructor (instructor) status, length of service, in-service training requirements, compliance with existing game laws, and payment of an application fee. The package proposes to reward long-term instructor service by providing additional entries in the drawing. For example, instructors must complete three (3) years of service in order to participate in the Program and will earn an additional entry for each additional ten (10) years of instructor service.

The proposal creates a drawing system to equitably distribute the opportunities provided under this program. Eligible instructors will be assigned a random number with those assigned the lowest random numbers receiving the highest rated opportunities. The proposal establishes a system to re-distribute tags in the event any instructor is unable or unwilling to utilize the opportunity provided, and establishes an appeal process regarding procedures and results of the drawing. The proposal also requires the payment of all state tag and seal fees as appropriate

Specifically:

- 1) Section 709(a) describes what incentives will be available and restricts eligibility to certified hunter education instructors;
- 2) Section 709(b) identifies eligibility criteria required for program participation;
- 3) Section 709(c) identifies the drawing process used to distribute the individual incentives;
- 4) Section 709.1 provides the criteria and process information specific to random draw big game license tag opportunities.

The specific benefits anticipated by the proposed adoption of this regulation are primarily nonmonetary in nature. It is anticipated there will be additional hunter education classes available throughout the state. This will increase California's citizen's understanding of hunter safety practices, principles of conservation, and sportsmanship. The regulation creates specific eligibility criteria for the distribution of volunteer instructor incentives thereby preventing discrimination, and instead assuring fairness and social equity. The regulation also adopts a random draw system open to the public to assure transparency and recruit additional Hunter Education Instructors.

The proposed regulation has been evaluated and not found to be inconsistent or incompatible with existing state or federal regulations. Fish and Game Code Section 3051 (f) authorizes the Department to adopt these proposed regulations. The proposed regulations implement recent amendments to Fish and Game Code section 3051(e).

NECESSITY

A pilot Hunter Education Incentive Program was implemented in 2008 in order to address the declining number of Hunter Education Instructors as well as to encourage current instructors to retain their certification and "active" status. This program consisted of Private Lands Management (PLM) tags and hunts donated by private hunting clubs. Although a limited number of opportunities were provided through the pilot program, the number of certified hunter education instructors climbed from 400 prior to implementation of the program to approximately 850 currently. Compliance with required training has increased from 50% prior to 2008 to well over 90% in 2010, and class numbers have increased from an average of 1,800 per year to over 2,000 in 2010.

PROBLEM ADDRESSED WITH THIS RULEMAKING

Current law requires all first time hunters in California be trained in Hunter Education and requires the department to designate instructors to meet the mandate. Fish and Game Code Section 3049 Legislative intent, declarations and findings, states; "It is the intent of the Legislature in enacting this article to ensure the health and safety of its citizens engaged in activities requiring the use of hunting implements. The legislation finds and declares that individuals who engage in hunting should possess an adequate understanding of hunter safety practices, principles of conservation, and sportsmanship. It is also the intent of the Legislature that persons so engaged be mindful of their responsibilities to others, toward wildlife, and toward their natural environment. The department shall take all steps necessary to carry out the provisions of this article."

Fish and Game Code 3051, Course of instruction; Certification of completion, states in part; "(a) The Department shall provide for a course of instruction in hunter education, principles of conservation, and sportsmanship,..." and "(b) The department may designate as a hunter education instructor any person found by it to be competent to give instruction in the courses required in this article. A person so appointed shall give that course of instruction, and, upon completion thereof, shall issue to the person instructed a certificate of completion as provided by the department in hunter safety, principles of conservation, and sportsmanship."

In California, Hunter Education classes are taught by volunteer instructors. Hunter Education Instructor (HEI) numbers have been declining in California since the 1970's. By 2008, HEI numbers were too low to meet the demand for classes. In efforts to increase instructor numbers to meet the demand for state mandated classes the department developed the Hunter Education Instructor Incentive Program.

The primary purpose of the Hunter Education Instructor Incentive Program is to recruit new instructors and to retain certified instructors. The goal is to build a sufficient volunteer corps to address the unmet public demand for mandatory classes. Based on calls received by the Department of Fish and Game (DFG) and Hunter Education Instructors (HEIs) statewide, 1,000 or more potential hunters are turned away each year due to lack of available hunter education classes. California Hunting license sales continue to decline (from 317,059 in 1999 to 295,687 in 2008). This loss of potential new hunters translates to a loss of revenue in hunting license and tag sales.

Second primary purpose is to recognize the long standing professional volunteer service of certified instructors to the state. During fiscal year 2007/2008 alone, approximately 850 certified instructors provided 2,044 classes statewide with an enrollment of 21,013 students. These men and women donated 20,349 hours of their personal time to DFG valued conservatively at \$698,378 (value based on hourly wage of a warden range B at \$34.32 / hour).

The regulatory change proposal creates specific eligibility criteria for Department of Fish and Game (DFG) HEIs to participate in the hunter education incentive program. These criteria include employment status, length of service, in-service training requirements, compliance with existing game laws, and payment of an application fee. The proposal rewards long-term service by providing additional entries in the drawing. For example, instructors must complete three (3) years service in order to participate in the incentive program and will earn an additional entry for each additional ten (10) years of service.

The proposal also creates a drawing system to equitably distribute the opportunities provided under this program. Eligible instructors will be assigned a random number with those assigned the lowest random numbers receiving the highest rated opportunities. The proposal establishes a system to re-distribute tags in the event any instructor is unable or unwilling to utilize the opportunity provided, and establishes an appeal process regarding procedures and results of the drawing. The proposal also may require the payment of all state tag and seal fees as appropriate.

TECHNICAL, THEORETICAL, AND/OR EMPIRICAL STUDIES, REPORTS, OR DOCUMENTS

Staff reviewed the United States Fish and Wildlife Services' Annual Hunter Education Reports for fiscal years 2007/08, 2008/09, and 2009/10 for hunter education instructor information. Staff did not rely on any other technical, theoretical, or empirical studies or reports in proposing the adoption of these regulations.

Creation of the Hunter Education Incentive Program has been the topic of discussion at several Fish and Game Commission (FGC) meetings since 2008 as well as at the FGCs' Al Taucher Committee to Preserve Hunting and Fishing Opportunities. Additionally, the concept has been discussed and approved at the DFG Executive and Legislative levels with the result of the enactment of AB1254 (Berryhill) on September 28, 2010. The proposed regulations implement this legislation.

Public comments regarding the proposed regulation resulting from the public notification will be evaluated for inclusion in the final verbatim and responses will be prepared and submitted for all comments as part of the regulatory process. Additional public comments regarding this regulatory proposal will be solicited at a public meeting to be scheduled in Sacramento, CA.

**REASONABLE ALTERNATIVES TO THE REGULATION AND THE AGENCY'S
REASONS FOR REJECTING THOSE ALTERNATIVES**

Regulations for implementing Section 3051 of the Fish and Game Code currently do not exist. This proposed regulation package is needed to establish the program and a process for fairly distributing opportunities.

**REASONABLE ALTERNATIVES TO THE PROPOSED REGULATORY ACTION
THAT WOULD LESSEN ANY ADVERSE ECONOMIC IMPACT ON SMALL OR
OTHER BUSINESSES**

The proposed regulatory action will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. Therefore, the Department has not identified any alternatives that will lessen any adverse impact on small businesses.

**EVIDENCE SUPPORTING FINDING OF NO SIGNIFICANT ADVERSE ECONOMIC
IMPACT ON ANY BUSINESS**

The proposal is to establish the Program, define eligibility criteria, and an equitable system for allocating a limited number of hunting opportunities. Given the number of these opportunities that will be provided and the area over which they are distributed, this proposal is economically neutral to business.

Section 709 is ADDED to read:

§ 709. Hunter Education Instructor Incentive Program

(a) The department will provide incentives, in the form of big-game tags provided voluntarily by licensed Private Lands Management areas, Cooperative Elk or Deer Hunting areas, or other tags or hunts designated by the department, to department-certified Hunter Education Instructors. The tags will be distributed in a random drawing according to the following procedures.

(b) Eligibility criteria

1. Only certified instructors who meet established eligibility criteria may participate in the drawing.

2. To be eligible to participate in the drawing, instructors must have been in active status for a minimum of three (3) consecutive years, inclusive of the year prior to the drawing. Instructors will earn an additional entry for every ten (10) years of active service. (For example, an instructor with ten years of service will have two (2) entries in the draw, while at twenty years of service the instructor would have three (3) entries.)

3. Active status is defined as those instructors who complete in-service training requirements and teach or assist in teaching at least one course every year. An instructor's eligibility status must be met by December 31st of any given year to be considered eligible for the drawing for the following year. Those instructors failing to meet those requirements will be considered inactive, and they will not be eligible to participate in the drawing.

4. Instructors who violate game laws or otherwise fail to perform as required, or who fail to follow prescribed procedures of the Hunter Education Program may have their instructor's certification suspended or revoked and therefore become ineligible to participate in the drawing.

5. Paid staff within the department's Hunter Education Program will not be eligible to participate in the drawing.

6. Instructors who are drawn and accept a tag or hunt will not be eligible to participate in the next five annual drawings.

(c) Incentive drawing procedures

1. Using the Hunter Education Instructor database, all eligible instructors will be assigned a random number for each year's pool of donated or department-designated tags or hunts. This draw will commence in the second week of July each year and proceed until all the tags or hunts are issued.

2. Among the instructors that are drawn, the instructor that is drawn first will select a tag or hunt from the available tags or hunts, and further selections will proceed based upon the order in which instructors were drawn.

3. If any instructor fails to accept or select an available tag or hunt within five (5) days of being notified by phone or mail, the instructor's selection rights will be forfeited and passed in order to the next person drawn. Alternate instructors may be drawn to insure that all tags or hunts are claimed.

4. If an instructor who accepted a tag or hunt notifies the department prior to the season opener that unforeseen circumstances will prevent participation in the selected hunt,

alternate instructors will be contacted in the order they were drawn and offered the opportunity to accept the tag or hunt.

5. Instructors who accept a tag are required to pay the tag fee set forth in the Fish and Game Code or these regulations.

709.1 Hunter Education Instructor Big Game Tag Drawing

(A) Commencing January 1, 2012, except as otherwise provided, the department will award the following big game license tag(s) using a random drawing system to hunter education instructors:

(1) Open zone deer, as described in sections 360 and 361.

(2) Any additional big game license tags (consistent with the Section 3051 of Fish and Game Code) which may be made available in the future in sections 360, 361, 363, and 364.

(B) Eligibility criteria

1. Only certified instructors who meet established eligibility criteria may participate in the drawing.

2. To be eligible to participate in the drawing, instructors must have been in active status for a minimum of three (3) consecutive years, inclusive of the year prior to the drawing.

3. Active status is defined as those instructors who complete in-service training requirements and teach or assist in teaching at least one course every year. An instructor's eligibility status must be met by December 31st of any given year to be considered eligible for the drawing for the following year. Those instructors failing to meet those requirements will be considered inactive, and they will not be eligible to participate in the drawing.

4. Instructors who violate game laws or otherwise fail to perform as required, or who fail to follow prescribed procedures of the Hunter Education Program may have their instructor's certification suspended or revoked and therefore become ineligible to participate in the drawing.

5. Paid staff within the department's Hunter Education Program will not be eligible to participate in the drawing.

6. Instructors who are drawn and accept a license tag will not be eligible to participate in the next five annual drawings.

(C) General Conditions

1. Eligible hunter education instructors who wish to apply for the Hunter Education Instructor open zone deer tag shall pay a nonrefundable fee for the fund-raising random draw tag as specified in Section 702 on or before June 2nd each year. All fees shall be deposited into the appropriate dedicated account.

2. Successful applicants must possess an annual California hunting license prior to issuance of the tag.

3. Hunter Education Instructors may purchase up to three random drawing applications during the same license year.

4. No applicant shall earn a preference point through this application process.

5. Accumulated preference points from general big game draws shall not be considered or applied in any of Hunter Education Incentive random drawings.
6. Hunter Education Incentive big game tags shall not be transferred to another person.
7. Successful applicants and a list of alternates for each open zone deer tag will be determined by drawing within 10 business days following the application deadline date. If the drawing is delayed due to circumstances beyond the department's control, the department shall conduct the drawing at the earliest date possible.
8. Unsuccessful applicants shall not be notified by mail.
9. Successful applicants shall claim their tags at the License and Revenue Branch, 1740 N. Market Blvd., Sacramento, CA 95834 by 5:00 p.m. on July 15 each year. If the deadline to claim the tag falls on a weekend or holiday the applicant can claim the tag until the close of business on the first state business day following the deadline. Any tags unclaimed by successful applicants after that date shall be awarded to alternates for that license tag in the order drawn.

Note: Authority cited: Sections 702, 3051, and 4334 Fish and Game Code.
Reference: Sections 3049, 3050, and 3051, Fish and Game Code.